(7)

No. 85-781

In the Supreme Court of the United States

OCTOBER TERM, 1985

FRANK G. BURKE, ACTING ARCHIVIST OF THE UNITED STATES, AND RONALD GEISLER, EXECUTIVE CLERK OF THE WHITE HOUSE, PETITIONERS

v.

MICHAEL D. BARNES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

CHARLES FRIED
Solicitor General

RICHARD K. WILLARD
Assistant Attorney General

CAROLYN B. KUHL
Deputy Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

WILLIAM KANTER
MARC JOHNSTON
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

64pp

QUESTIONS PRESENTED

1. Whether the passage of the expiration date specified in a bill renders moot this case concerning whether the bill became a law.

2. Whether individual Members of Congress, the Senate, and the Speaker and Bipartisan Leadership Group of the House of Representatives have standing to bring this action against Executive Branch officials to establish that a bill from which the President has withheld his approval in reliance upon the "Pocket Veto" Clause of the Constitution (Art. I, § 7, Cl. 2), became a law.

3. Whether the "Pocket Veto" Clause, which provides that a bill not signed by the President within ten days (Sundays excepted) does not become a law if "Congress by their Adjournment prevent its Return," applies when, on the tenth day after presentment of the bill, Congress has adjourned the First Session of a Congress sine die.

PARTIES TO THE PROCEEDING

The appellees in the court of appeals were Ray Kline, Acting Administrator of General Services, and Ronald Geisler, Executive Clerk of the White House. Effective April 1, 1985, responsibility for publishing the Statutes at Large and preserving the laws of the United States was transferred from the Administrator of General Services to the Archivist of the United States. National Archives and Records Administration Act of 1984, Pub. L. No. 98-497, § 107(d), 98 Stat. 2291, 1 U.S.C. (Supp. II) 106a, 112. Accordingly, Frank G. Burke, Acting Archivist of the United States, has been substituted for the Acting Administrator of General Services.

The appellants in the court of appeals were the plaintiffs and intervenors in the district court. The plaintiffs were 33 members of the House of Representatives: Michael D. Barnes, Gary Ackerman, Howard Berman, John Conyers, Ronald V. Dellums, Mervyn Dymally, Dennis Eckart, Robert W. Edgar, Vic Fazio, Ed Feighan, Barney Frank, Robert Garcia, Samuel Gejdenson, Peter Kostmeyer, Mickey Leland, Mel Levine, Robert Matsui, Matt McHugh, Edward J. Markey, Barbara A. Mikulski, George Miller, Bruce Morrison, Mary Rose Oakar, James L. Oberstar, Richard L. Ottinger, Patricia Schroeder, Paul Simon, Ferdinand St. Germain, Gerry Studds, Robert Torricelli, Bruce Vento, Ted Weiss, and Howard Wolpe. The intervenors were the United States Senate and the Speaker and Bipartisan Leadership Group of the House of Representatives: Thomas P. O'Neill, Jr., Jim Wright, Robert H. Michel, Thomas S. Foley, and Trent Lott.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution and statutes:

Constitution and statutes—Continued: Page

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-781

FRANK G. BURKE, ACTING ARCHIVIST OF THE UNITED STATES, AND RONALD GEISLER, EXECUTIVE CLERK OF THE WHITE HOUSE, PETITIONERS

v.

MICHAEL D. BARNES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-118a) is reported at 759 F.2d 21. The memorandum of the district court (Pet. App. 119a-132a) is reported at 582 F. Supp. 163.

JURISDICTION

The judgment of the court of appeals (Pet. App. 137a-138a) was entered on August 29, 1984, and a petition for rehearing was denied on August 7, 1985 (Pet. App. 133a-134a). The petition for a writ of certiorari was filed on November 5, 1985, and was granted on March 3, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND BILL INVOLVED

1. Article I, Section 5, Clause 4; Article I, Section 7, Clauses 2 and 3; and Article III, Section 2, Clause 3 of the Constitution are reproduced at App., *infra*, 1a-2a.

2. Section 728 of the International Security and Development Cooperation Act of 1981, Pub. L. No. 97-113, 95 Stat. 1555, as amended by Pub. L. No. 97-233, 96 Stat. 260, and Pub. L. No. 98-53, 97 Stat. 287 (22 U.S.C. (& Supp. II) 2370 note) is reproduced at Pet. App. 141a-145a.

3. H.R. 4042, 98th Cong., 1st Sess. (1983), is reproduced at App., *infra*, 1a-2a.

STATEMENT

1. On November 18, 1983, a bill that had originated in the House of Representatives, H.R. 4042, 98th Cong., 1st Sess. (Pet. App. 141a), was presented to the President for his consideration pursuant to Article I, Section 7, Clause 2 of the Constitution (Pet. App. 4a-5a). The bill provided that, "until such time as the Congress enacts new legislation * * * or until September 30, 1984, whichever occurs first," the requirements of Section 728 of the International Security and Development Cooperation Act of 1981[1] "shall continue to apply" (Pet. App. 141a). Section 728, which had expired on September 30, 1983, conditioned United States military aid to El Salvador on semiannual certification by the President that El Salvador was achieving progress in protecting human rights (Pet. App. 4a n.6, 141a-145a).

On the day that H.R. 4042 was presented to the President, the Senate and the House of Representatives, by concurrent resolution, ended the First Session of the 98th Congress and adjourned sine die. Pet. App. 5a; H.R. Con. Res. 221, 98th Cong., 1st Sess. (1983); 129 Cong. Rec. S16779, S16858, H10469 (daily ed. Nov. 18, 1983). By a separate joint resolution, which was passed the same day and approved by the President as required by Section 2 of the Twentieth Amendment, Congress specified that the Second Session of the 98th Congress would commence on January 23, 1984, some nine weeks later. Pub. L. No. 98-179, § 2, 97 Stat. 1127; 129 Cong. Rec. H10105 (daily ed. Nov. 16, 1983); *id.* at S16858. During this

[1] Pub. L. No. 97-113, 95 Stat. 1555 (22 U.S.C. (& Supp. II) 2370 note) (Pet. App. 141a-145a).

period between the two Sessions, a standing rule of the House authorized the Clerk to "receive messages from the President and from the Senate at any time that the House is not in session." H.R. Rule III, Cl. 5, *reprinted in* H.R. Doc. 97-271, 97th Cong., 2d Sess. 318 (1983). The Senate conferred similar, temporary authority on its Secretary. 129 Cong. Rec. S17192-S17193 (daily ed. Nov. 18, 1983); Pet. App. 5a.

The President neither signed H.R. 4042 nor returned it to the House of Representatives with his objections. Instead, on November 30, 1983, the White House issued a statement announcing that the President had withheld his approval of H.R. 4042 (19 Weekly Comp. Pres. Doc. 1627). In the President's view, by operation of the "Pocket Veto" Clause of the Constitution (Art. I, § 7, Cl. 2), H.R. 4042 had not become a law because Congress was in adjournment on the tenth day (excluding Sundays) following presentment of the bill. Pet. App. 5a-6a.

2. On January 4, 1984, 33 Members of the House of Representatives filed this action in the United States District Court for the District of Columbia, seeking a declaration that H.R. 4042 had become a law and an injunction requiring petitioners to cause the bill to be published in the Statutes at Large (Pet. App. 6a, 120a; see J.A. 16-29).[2] The Senate and the Speaker and Bipartisan Leadership Group of the House of Representatives inter-

[2] The original defendants were petitioner Ronald Geisler, Executive Clerk of the White House (who delivers bills that have become laws to the appropriate official for publication), and Gerald P. Carmen, the then-Administrator of General Services (who at the time was charged with receiving, preserving and publishing all laws of the United States). See Pet. App. 119a-120a; 1 U.S.C. (Supp. II) 106a, 112. Ray Kline, the Acting Administrator of General Services, was later substituted for Carmen. Pet. App. 3a & n.4. In view of the transfer of relevant responsibilities to the Archivist of the United States (see National Archives and Records Administration Act of 1984, Pub. L. No. 98-497, § 107(d), 98 Stat. 2291 (1 U.S.C. (Supp. II) 106a, 112)), Frank G. Burke, Acting Archivist of the United States, has been substituted for Kline as a petitioner. For simplicity, we include Burke's predecessors in our references to "petitioners."

vened in support of the plaintiffs (Pet. App. 2a-3a & n.3, 119a n.1) and, with them, are respondents here.

The district court granted summary judgment for petitioners and dismissed the complaint (Pet. App. 119a-132a). The district court concluded (*id.* at 130a) that it had no "license to depart from the only case directly in point," this Court's decision in *The Pocket Veto Case*, 279 U.S. 655 (1929), in which the question presented was "identical to the question presented by the instant case" (Pet. App. 126a). Accordingly, the court held that H.R. 4042 did not become law because, as in *The Pocket Veto Case*, the President withheld his approval of the bill following an adjournment sine die of the first session of a Congress (Pet. App. 130a-131a).

3. a. A divided panel of the court of appeals reversed (Pet. App. 1a-118a). The majority first held that, under circuit precedent, respondents had standing to bring this action (*id.* at 8a-18a). The court relied primarily on its decision in *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1974), which held that a single Senator had standing to challenge a pocket veto on the ground that it had "nullified his original vote in favor of the legislation" (Pet. App. 8a). In the court's view, the individual Members of Congress in this case allege an identical injury (*id.* at 9a). The court also observed that the panel in *Kennedy* v. *Sampson* had stated that either House of Congress would have had standing based on the alleged injury to its participation in the lawmaking process resulting from the President's reliance on the Pocket Veto Clause (*ibid.*), and it held that, in this case, the Senate and Speaker and Bipartisan Leadership Group of the House have standing on the same theory (*ibid.*).[3]

Turning to the merits, the court of appeals held that Congress's adjournment sine die did not "prevent [the] Return" of H.R. 4042 within the meaning of the Pocket

[3] Petitioners did not initially contest the standing of the Senate (Pet. App. 15a-17a & n.16). However, upon further consideration, petitioners argued in the supplemental petition for rehearing (at 7-10) that none of the respondents has standing.

Veto Clause because each House had authorized an agent to receive messages from the President following the adjournment (Pet. App. 20a). The court acknowledged this Court's conclusion in *The Pocket Veto Case* that an adjournment at the end of a session would prevent the President from returning a bill "'even if'" Congress had authorized an agent to receive messages (*id.* at 26a (quoting 279 U.S. at 684)). But the court believed that a different result was justified by the subsequent decision in *Wright* v. *United States*, 302 U.S. 583 (1938), which held that the President's actual veto of a bill was effective because he had delivered it with his objections to an agent of the originating House while that House alone was in a brief intrasession recess (Pet. App. 27a). Although *Wright* involved only a three-day recess, the court noted that it had relied on *Wright* in *Kennedy* v. *Sampson* to hold that "return is not prevented by an intrasession adjournment of any length * * * so long as the originating house arranged for receipt of veto messages" (*id.* at 30a). Based on its view that adjournments sine die at the end of the first session of a Congress "do not differ in any practical respect from * * * intrasession adjournments" (*id.* at 33a), the court extended *Kennedy* v. *Sampson* to all such "intersession" adjournments as well (*id.* at 38a).

b. In a lengthy dissent that did not reach the merits, Judge Bork concluded that respondents lack standing to bring this suit (Pet. App. 47a-118a). He perceived no distinction between suits alleging injury to the lawmaking powers of the House and Senate and suits seeking to require the President faithfully to execute a particular statute (*id.* at 56a-57a n.3): both raise "only a 'generalized grievance' about an allegedly unconstitutional operation of government" (*id.* at 65a). Judge Bork further concluded that the doctrine of congressional standing is inconsistent with this Court's teaching that "'the law of Art. III standing is built on a single basic idea—the idea of separation of powers'" (*id.* at 70a (quoting

Allen v. *Wright*, 468 U.S. 737, 752 (1984)), because it would lead to a centralization of power in the Judicial Branch to lay down prematurely the rules for the other Branches to follow (Pet. App. 76a-78a). Accordingly, Judge Bork concluded, a court should entertain a suit such as this only at the behest of "a private party who ha[s] a direct stake in the outcome," as in *The Pocket Veto Case* itself (*id.* at 64a).

4. The court of appeals entered its judgment on August 29, 1984, one month before the expiration date specified in H.R. 4042 (Pet. App. 137a-138a), but it did not issue its opinions until April 12, 1985 (see *id.* at 1a). Petitioners filed a supplemental petition for rehearing en banc on May 17, 1985 (see Pet. 9 & n.5), urging (in addition to arguments on standing and the merits) that the controversy became moot after September 30, 1984, because even if H.R. 4042 had become a law, the certification requirement would have expired on that date. On August 7, 1985, the court, with Judges Bork, Scalia, and Starr dissenting, denied the petition for rehearing en banc (Pet. App. 134a-136a).

SUMMARY OF ARGUMENT

I. This case is now moot, because, even if H.R. 4042 did become a law, the certification precondition it imposed on further military aid to El Salvador expired on September 30, 1984. Respondents attempt to avoid mootness by arguing that they are entitled even now to see H.R. 4042 published as a law in the Statutes at Large. However, publication is a consequence that is entirely collateral to the substantive constitutional question whether H.R. 4042 became a law and unrelated to respondents' role in the legislative process, which is the interest they sought to vindicate in this suit.

II. Respondents do not have standing to bring this suit. To recognize a right in Congress or its Members to invoke the power of the federal courts to resolve a wholly intragovernmental dispute with the Executive Branch would be inconsistent with the doctrine of separation of powers on which the law of standing is based. The injuries that respondents allege in this case—the "nullification" of their individual votes and the frustration of Congress's lawmaking powers as a result of the President's reliance on the Pocket Veto Clause—are merely restatements of respondents' abstract interest in obtaining what is essentially an advisory opinion. Moreover, just as Congress cannot overrule Executive action directly by means of a legislative veto, it cannot do so indirectly through the intermediary of the federal courts.

If the President had admitted that H.R. 4042 became a law but refused to enforce it, respondents clearly would not have standing to challenge that decision. Respondents' claim in this case is no different, because at bottom it is simply that the President failed to execute H.R. 4042. In the absence of a distinct and palpable injury, Members of Congress, like the members of the public they represent, have no standing based on a generalized grievance that the Executive has failed to follow the law. The Houses of Congress likewise do not have standing on the basis of their roles in the legislative process. The Pocket Veto Clause merely states one rule for determining when a bill becomes a law in the course of the interaction of the Legislative and Executive Branches in the lawmaking process. The failure of a bill to become a law by operation of that Clause therefore is not a "violation" of the Constitution that causes a judicially cognizable "injury" to Congress.

Nor do respondents have standing to enforce an alleged duty by petitioners to cause H.R. 4042 to be published in the Statutes at Large. In this regard, respondents assert no more than a generalized interest shared by all citizens in the public availability of laws. Moreover, the statutes imposing a duty on the Archivist to publish laws were never intended to be a vehicle for the litigation of the antecedent constitutional question of whether a particular bill in fact did become a law.

III. On the merits, this case is squarely controlled by the Court's unanimous decision in *The Pocket Veto Case*, 279 U.S. 655 (1929). There, the Court expressly held

that, by operation of the Pocket Veto Clause, the bill in question "did not become a law," because "the adjournment of the first session of the * * * Congress * * * prevented the President, within the meaning of the constitutional provision, from returning [the bill]" to be reconsidered by Congress (279 U.S. at 691-692). The court of appeals sought to avoid *The Pocket Veto Case* on the ground that the Senate and House now provide for an agent to receive messages from the President after adjournment. However, the Court made clear in *The Pocket Veto Case* that, "even if authorized by Congress itself," an attempted return of the bill by means of delivery to an agent of Congress "would not comply with the constitutional mandate" (279 U.S. at 684). As the Court stressed, its construction of the Clause was supported by "[l]ong settled and established practice" (*id.* at 689), "commencing with President Madison's administration" (*id.* at 691).

The court of appeals erred in believing that *Wright* v. *United States*, 302 U.S. 583 (1938), justified its refusal to follow *The Pocket Veto Case*. *Wright* expressly did not disturb the holding in *The Pocket Veto Case*. The Court also repeatedly stressed in *Wright* that the recess in question was not an adjournment by "the Congress," to which the Pocket Veto Clause refers, but rather a three-day recess that was taken by only one House and was limited by the constitutional provision (Art. I, § 5, Cl. 4) that prohibits an adjournment of more than three days without concurrent action by both Houses.

The conclusion that the Pocket Veto Clause is applicable whenever Congress has adjourned sine die is, in any event, compelled by the language of the Article I, Section 7, Clause 2, which directly links the status of a bill to the formal act of adjournment by Congress. This rule specified by the Constitution cannot be altered by the internal rules of either House authorizing an agent to receive messages from the President following an adjournment. The lawmaking procedures of which the Pocket Veto Clause is an integral part make clear that the Constitution regards the disapproval of a bill by the President

as an important occasion of disagreement between the political Branches that must be promptly recorded on the journal of the originating House and be subject to immediate resolution. To require the President to deliver a bill to an agent of Congress, with whom it might languish for weeks or months until Congress reconvenes, would trivialize the importance the Framers attached to the President's return of a bill.

ARGUMENT

I. THIS CASE IS MOOT BECAUSE, EVEN IF H.R. 4042 BECAME A LAW, ITS CERTIFICATION REQUIREMENT EXPIRED ON SEPTEMBER 30, 1984

As respondents stated in the court of appeals, they did not bring this action "merely to assert an abstract interest in bill publication."[4] Rather, respondents sought a declaration that H.R. 4042 had become a law in order to cause the President to follow the bill's certification requirement before giving further military aid to El Salvador.[5] The plain and undeniable truth, however, is that the question whether H.R. 4042 became a law was rendered moot on September 30, 1984—more than six months before the court of appeals issued its opinions—when the certification requirement imposed by H.R. 4042 was to expire in any event. Regardless of whether H.R. 4042 ever *was* a law, it plainly is not *now* a law, and no form of judicial relief can change that fact. This case therefore has "lost its character as a present, live controversy of the kind that must exist if [the Court is]

---

[4] Br. for Appellants and Pet. for Issuance of a Writ of Mandamus 6 (Jan. 10, 1984).

[5] To that end, when plaintiffs filed their complaint on January 4, 1984, they requested a ruling from the district court before January 16, 1984, the date on which the next certification would have been due if the bill had become a law. See J.A. 44. When the district court denied their motions for expedited treatment and a preliminary injunction (J.A. 37, 41), plaintiffs unsuccessfully sought emergency relief from the court of appeals (J.A. 48-52).

to avoid advisory opinions on abstract propositions of law." *Hall* v. *Beals*, 396 U.S. 45, 48 (1969).

It is fundamental that a challenge to a statute becomes moot when the statute is no longer in force. See, *e.g.*, *Kremens* v. *Bartley*, 431 U.S. 119, 128-129 (1977); *Diffenderfer* v. *Central Baptist Church*, 404 U.S. 412, 414-415 (1972); cf. *National Organization for Women, Inc. (NOW)* v. *Idaho*, 459 U.S. 809 (1982) (challenge to Congress's extension of ratification period for constitutional amendment became moot when extended period expired). Despite respondents' efforts early in the litigation to obtain a ruling at a time when a judgment in their favor might have provided meaningful relief (see note 5, *supra*), the certification requirement contained in H.R. 4042 expired before the suit could be completed. Accordingly, this Court should follow its "established practice" of "vacat[ing] the judgment below and remand[ing] with a direction to dismiss." *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). That course is especially appropriate here, because this case involves fundamental constitutional questions that may " 'legitimate[ly] [be resolved] only in the last resort, and as a necessity in the determination of real, earnest and vital controversy.' " *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (citation omitted).

Respondents now argue (J. Br. in Opp. 11-12; H.R. Br. in Opp. 17-18[6]) that this case in not moot because they are entitled to see H.R. 4042 published in the Statutes at Large. But even if respondents had standing to request such relief (but see pages 28-30, *infra*), their reliance on the purely collateral consequence of publication plainly is insufficient to save this case from mootness. *Powell* v. *McCormack*, 395 U.S. 486, 496 (1969).

---

[6] "J. Br. in Opp." refers to the joint brief filed by Michael D. Barnes, et al., and the United States Senate. "H.R. Br. in Opp." refers to the brief filed by the Speaker and Bipartisan Leadership Group of the House of Representatives.

Petitioner Burke's failure to publish H.R. 4042 as the dead letter that it now undeniably is has no effect whatsoever on respondents' lawmaking powers, the asserted "nullification" of which, they acknowledge (J. Br. in Opp. 7), was the "underlying injury" on which this lawsuit was premised. The bill publication statutes do not "implement the constitutional design for the legislative process," as respondents baldly assert (J. Br. in Opp. 4), because the Constitution nowhere requires that a bill be published in the Statutes at Large in order for it to be a law. If the Pocket Veto Clause was inapplicable despite the adjournment sine die of the First Session of the 98th Congress, then H.R. 4042 automatically became a law on the tenth day (Sundays excepted) following its presentment to the President, notwithstanding the failure to publish it. By the same token, if Congress's adjournment sine die prevented the return of the H.R. 4042 within the meaning of that Clause, the bill did not become a law, and it could not be rendered one by publication. And either way, H.R. 4042 does not now and never will have any legal effect.

For this reason, acceptance of respondents' suggestion that they have a continuing interest in the publication of H.R. 4042 would convert this case into a "debate[] concerning harmless, empty shadows." *Poe* v. *Ullman*, 367 U.S. 497, 508 (1961) (opinion of Frankfurter, J.). Indeed, on respondents' theory, they could challenge even the earliest pocket vetoes, which occurred as much as 175 years ago, simply by seeking a formal acknowledgment in the Statutes at Large that, contrary to the long-accepted view, the bills involved had become laws. Although respondents sought declaratory and injunctive relief requiring publication of H.R. 4042 as a law (J.A. 28-29, 59, 90), that relief had been viewed (until the bill expired) as merely a formal acknowledgment of the fundamental relief they desired: vindication of their roles in the enactment of a law by a judgment that would cause the President to follow the certification requirement of H.R. 4042.

Moreover, respondents' contention that this case is still "live" because they seek formal recognition of their position that H.R. 4042 once had the force of law is indistinguishable from the argument rejected by this Court in *NOW* v. *Idaho*. There, the State of Idaho urged that a challenge to Congress's power to extend the ratification period for the Equal Rights Amendment was not moot because the Administrator of General Services, by "refusing to make any official announcement honoring the rescinding resolutions of other states," had "damaged the sovereign power and authority of the states" and "deprived members of the Idaho Legislature of the effectiveness of their votes." Response of the States of Idaho and Arizona, et al., in Opposition to the Administrator's Suggestion of Mootness, at 11. This Court nevertheless unanimously directed that the case be dismissed as moot (459 U.S. at 809). Because such an "official announcement" is all that respondents seek here, *NOW* requires that the judgment below be vacated and the case remanded with instructions to dismiss as moot.[7]

II. RESPONDENTS DO NOT HAVE STANDING TO OBTAIN A JUDICIAL DECLARATION THAT H.R. 4042 BECAME A LAW

This case would be nonjusticiable even if it were not moot, because respondents have from the outset lacked standing to sue. Respondents alleged only that the votes of the individual Members in favor of the bill have been

[7] Respondents attempt (J. Br. in Opp. 13 n.10; H.R. Br. in Opp. 17 n.20) to distinguish *NOW* on the ground that Idaho there sought an acknowledgement that its Legislature voted against a failed measure, while respondents here seek recognition that they voted in favor of a bill that passed both Houses of Congress. Although this distinction might have made a difference for mootness purposes if H.R. 4042 were still capable of being put into effect, that bill can enjoy no greater legal status at this late date than could the unsuccessful constitutional amendment at issue in *NOW*. The only question in both cases is whether formal publication by the responsible government officials of the position taken by the plaintiff is sufficient, in the absence of continuing legal consequences, to keep a case alive.

"nullified" (Pet. App. 8a) and that the "lawmaking powers of the two houses of Congress" have been "injur[ed]" (*id.* at 9a). See J.A. 27, 58, 90. The court of appeals held that these allegations were sufficient to confer standing on respondents, relying on a doctrine of congressional standing unique to the District of Columbia Circuit (*ibid.*).[8] That doctrine, however, ignores the concern for separation of powers that is the foundation of the law of standing. The Constitution does not confer on the Legislative Branch or its Members any legally cognizable interest, enforceable through the courts, in the conduct or affairs of a coordinate Branch.

It is particularly clear that respondents do not have standing in this case. At bottom, they complain of nothing more than the President's failure to regard H.R. 4042 as a law and to follow its certification provisions. Such a generalized grievance is not judicially cognizable. Members of Congress, like members of the public they represent who are not specifically injured, lack the personal stake necessary to challenge the manner in which Executive Branch officials execute the law. So, too, do the Senate and House of Representatives, which are collective bodies "composed" of Senators and Members (Art. I, § 2, Cl. 1; Art. I § 3, Cl. 1) who themselves lack standing.

A. The Separation Of Powers On Which Principles Of Standing Are Based Forecloses Suits By Congress Or Its Members Challenging The Actions Of Executive Officials

In *Allen* the Court made clear that "the law of Art. III standing is built on a single basic idea—the idea of sepa-

[8] See, *e.g.*, *Moore* v. *United States House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984), cert. denied, 469 U.S. 1106 (1985); *Vander Jagt* v. *O'Neill*, 699 F.2d 1166 (D.C. Cir.), cert. denied, 464 U.S. 823 (1983); *Riegle* v. *Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981); *Kennedy* v. *Sampson*. The doctrine has thus far gone unreviewed by this Court: in the cases in which the Court denied certiorari, the court of appeals had, "largely through application of the doctrine of equitable discretion, * * * awarded judgment *for* the party that was challenging standing." *Moore*, 733 F.2d at 960 (Scalia, J., concurring).

ration of powers" (468 U.S. at 752). This "basic idea" is rooted in the text of Article III, which extends the "judicial Power" only to "Cases" and "Controversies." Art. III, § 2, Cl. 1. These terms reflect historical practices that limited courts to a role that was " 'strictly judicial in its character' " (*Muskrat* v. *United States*, 219 U.S. 346, 355 (1911), quoting *Gordon* v. *United States*, 117 U.S. 697, 706 (1864)).[9] This limitation also is reflected in the reference in Article III to cases "in Law and Equity", which "was a term well understood, and of limited signification." *Speech of Chief Justice Marshall to the House of Representatives*, 18 U.S. (5 Wheat.) App. 3, 16 (1820). Cf. *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 405 (1821). The terms "Cases" and "Controversies" thus were intended to confine the federal courts to resolving those disputes that have "assume[d] such a form that the judicial power is capable of acting on [them]" (*Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738, 819 (1824)) and "are traditionally thought to be capable of resolution through the judicial process" (*Flast* v. *Cohen*, 392 U.S. 83, 97 (1968)).

A central feature of a "case" or "controversy" as so conceived is that the dispute must be submitted by a "proper and appropriate party" (*Flast*, 392 U.S. at 102) in " 'such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs' " (*Muskrat* v. *United States*, 219 U.S. at 357, quoting *In re Pacific Ry. Comm'n*, 32 F. 241, 255 (1887) (Field, J.)).

[9] This interpretation is confirmed by the debates of the Constitutional Convention. In response to a motion to extend the judicial power to cases arising under the Constitution, James Madison questioned whether the jurisdictional grant "ought not to be limited to cases of a Judiciary Nature," because "[t]he right of expounding the Constitution in cases not of this nature ought not to be given to that Department." The proposal was adopted, but so too was Madison's view of the circumstances in which the courts might pass on constitutional questions, "it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature." 2 *The Records of the Federal Convention of 1787*, at 430 (M. Farrand ed. 1966) [hereinafter cited as Farrand].

In order to be a "proper and appropriate party," the plaintiff must " 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant' " (*Valley Forge*, 454 U.S. at 472, quoting *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979)), and that he " 'stand[s] to profit in some personal interest' " by a judgment in his favor (*Allen*, 468 U.S. at 766, quoting *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 39 (1976)). In particular, the plaintiff must allege a distinct personal stake in the outcome, rather than "generalized grievances about the conduct of government or the allocation of power in the Federal System" (*United States* v. *Richardson*, 418 U.S. 166, 173 (1974), citing *Flast*, 392 U.S. at 106).

Through these requirements, the prerequisite of standing imposes a "fundamental limit[] on federal judicial power in our system of government" (*Allen*, 468 U.S. at 750). See also *Richardson*, 418 U.S. at 188 (Powell, J., concurring) ("Relaxation of standing requirements is directly related to the expansion of judicial power."). It assures that legal questions will be resolved "in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action"; and it "reflects a due regard for the autonomy of those persons likely to be most directly affected by a judicial order," so that the judicial power is " 'more than a vehicle for the vindication of the value interests of concerned bystanders' " (*Valley Forge*, 454 U.S. at 472-473, quoting *United States* v. *SCRAP*, 412 U.S. 669, 687 (1973)). Standing requirements of course take on added significance when an exercise of judicial power would "affect[] relationships between the coequal arms of the National Government," because " 'repeated and essentially head-on confrontations between the life tenured branch and the representative branches of government will not, in the long run, be beneficial to either' " (*Valley Forge*, 454 U.S. at 473-474, quoting *Richardson*, 418 U.S. at 188 (Powell, J., concurring)).

There is an irreconcilable conflict between the principles of separated powers that Article III embodies and

a case, such as this one, in which a court is asked to referee an intragovernmental dispute *between* the political Branches, and to do so in the absence of any claim by a private party that he has been injured or that he stands to benefit as a result of the court's decision. Compare *Chadha*, 462 U.S. at 935-936. The injury alleged here—a "nullification" of the votes of individual Members and the impact on the "lawmaking powers" of Congress resulting from the President's determination that H.R. 4042 failed to become a law—is not an injury in the conventional Article III sense. Instead, it is merely a restatement of respondents' disagreement with the President's interpretation of the Pocket Veto Clause of the Constitution. Neither the President nor Congress (or its Members) could unilaterally obtain an advisory opinion from the federal courts with respect to whether H.R. 4042 became a law. See Correspondence of the Justices, *reprinted in* 3 *The Correspondence and Public Papers of John Jay* 486-489 (H. Johnston ed. 1891); *Muskrat*, 219 U.S. at 354. That issue is no more suitable for judicial resolution in its present posture merely because the Senate and some Members of the House have put their request in the form of a complaint and named as defendants two officials of the other political Branch who happen to take a contrary view of the constitutional issue.[10] The

[10] Congress's request for a ruling regarding the legal status of a measure passed by the House and Senate resembles the proposal, rejected by the Constitutional Convention, for joining members of the Judiciary in a council of revision to review all bills passed by the National Legislature. This design was opposed because such participation might bias the judges in future litigation coming before them, detract from the responsibility of the President, and "involve[] an improper mixture of powers." 1 Farrand 139-140. Opponents also argued that the Judiciary "should have the confidence of the people," which "will soon be lost, if they are employed in the task of remonstrating [against] popular measures of the Legislature" (2 Farrand 76-77), and that "Judges ought never to give their opinion on a law till it comes before them" (*id.* at 80). See generally *id.* at 73-80. These reasons for disassociating the Judicial Branch from disputes between the political Branches in the legislative process, and for confining the judicial

Framers did not contemplate that the federal courts would, in this manner, assume "a role of continual and pervasive intrusiveness into the relationships of the branches" and "step directly between the other branches [to] settle disputes, presented in the abstract, about powers of governance." Pet. App. 75a (Bork, J., dissenting).[11]

There are, moreover, special factors defining the role of Congress under the Constitution that counsel against a holding that Congress has a legally cognizable interest and is a "proper and appropriate party" to sue for a declaration concerning the actions of the Executive or the consequences of Congress's actions under the Constitution. It is the "legislative Powers" that Article I, Section 1 vests in Congress, and those powers consist of the " 'authority to make laws' " (*Buckley* v. *Valeo*, 424 U.S. 1,

role in such matters to the resolution of cases that are properly brought before the courts by parties who are directly and personally affected, weigh heavily against recognition of a right in Congress or its Houses and Members to submit the dispute between the political Branches in the instant case to the federal courts. Compare *Richardson*, 418 U.S. at 189-191 & n.9 (Powell, J., concurring).

[11] We do not suggest, of course, that the particular issue that respondents seek to litigate—whether H.R. 4042 failed to become a law by operation of the Pocket Veto Clause—is itself a "political question" that cannot be resolved by the federal courts in any case. That question plainly can be decided in a suit brought by a party who would have rights under the bill if it did become a law. See *The Pocket Veto Case; Wright* v. *United States*. Nevertheless, the considerations underlying the political question doctrine properly inform the standing inquiry in this case. For just as the doctrine of Article III standing rests on principles of separation of powers (*Allen*, 468 U.S. at 750), "[t]he nonjusticiability of a political question is primarily a function of the separation of powers" and "the relationship between the judiciary and the coordinate branches of the Federal Government" (*Baker* v. *Carr*, 369 U.S. 186, 210 (1962)). In this a suit brought by Members of the Legislative Branch against officials of the Executive Branch, with no private parties or rights involved, the separation-of-powers concerns given expression by the political question doctrine have a special applicability and make it especially inappropriate for the Judicial Branch to step between the political Branches to resolve a purely intragovernmental dispute. See *Goldwater* v. *Carter*, 444 U.S. 996, 1004-1005 (1979) (Rehnquist, J., concurring).

139 (1976), quoting *Springer* v. *Philippine Islands*, 277 U.S. 189, 202 (1928)).[12] In providing for the separation of powers and a system of checks and balances, the Framers sought "to assure, as nearly as possible, that each branch of government would confine itself to its assigned responsibility." *Chadha*, 462 U.S. at 951. Consistent with this plan, Congress's "powers are confined to legislative duties, and restricted within prescribed limits." *Gordon* v. *United States*, 117 U.S. at 705.

Congress's ability to assert its will in ways that affect the operation of the other Branches is therefore confined to the powers and means of exercising those powers that are provided for in the Constitution. Specifically, because of concern that Congress would aggrandize itself at the expense of the other Branches, the Framers required that all actions by Congress that have "the purpose and effect of altering the legal rights, duties and relations of * * * Executive Branch officials [and others] outside the Legislative Branch" (*Chadha*, 462 U.S. at 952) must be in the form of a duly enacted law. See generally *id.* at 945-951. Congress's "[d]isagreement" with the Executive Branch therefore "involves determinations of policy that Congress can implement in only one way: bicameral passage followed by presentment to the President" (*id.* at 954-955). Just as Congress cannot overrule Executive action directly by means of a legislative veto, Congress cannot accomplish the same result indirectly by invoking the assistance of the federal courts to prosecute its disagreement with the Executive. See *The Federalist* No. 48, at 308 (Madison) (Rossiter ed. 1966) (none of the departments "ought to possess, *directly or indirectly*, an overruling influence over the others in the administration of their respective duties").

---

[12] See *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 417 (1819) ("Could it be necessary to say, that a legislature should exercise legislative powers, in the shape of legislation?"); *The Federalist* No. 33, at 202 (Hamilton) (Rossiter ed. 1966) ("What is a LEGISLATIVE power but a power of making LAWS? What are the means to execute a LEGISLATIVE power but LAWS?").

The Constitution is structured to give each Branch specified powers—checks and balances—in relation to the other Branches as a means of confining each to its respective authority. *The Federalist* No. 51, at 320 (Madison). But the Court has construed these express constitutional provisions for the involvement by one Branch in the affairs of another to be exclusive. See, *e.g.*, *Chadha*, 462 U.S. at 955-956; *Buckley*, 424 U.S. at 127; *Myers* v. *United States*, 272 U.S. 52, 116 (1926); *Kilbourn* v. *Thompson*, 103 U.S. 168, 191 (1880). Accordingly, and in light of the other resources available to Congress in its legislative and oversight capacities (see *Chadha*, 462 U.S. at 954-955 & nn.18, 19; *Laird* v. *Tatum*, 408 U.S. 1, 15 (1972)), Congress and its Members should not be accorded a wholly unaccustomed right, heretofore unrecognized by this Court, to invoke the offices of the federal courts to resolve a dispute with the Executive Branch. As this Court has held, the "power to seek judicial relief * * * is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law, and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.' Art. II, § 3." *Buckley*, 424 U.S. at 138.[13]

---

[13] It is significant that the Framers made available an alternative process by which Congress may bring about an adjudication of the legality of conduct by Executive Branch officials, but carefully limited the circumstances and manner in which it may be invoked. That alternative is impeachment by the House (Art. I, § 2, Cl. 5) and trial by the Senate (Art. I, § 3, Cl. 6), but only in cases of possible "Treason, Bribery, or other high Crimes and Misdemeanors" (Art. I, § 4). The impeachment process was regarded as "political" in nature, in the sense that it provides for an inquiry into the "conduct of public men" (*The Federalist* No. 65, at 396-397) (Hamilton). For that reason, the power was lodged in Congress itself, with the Senate sitting as a court of impeachment. See generally *id.* at 396-401; *The Federalist* No. 66, at 401-407 (Hamilton). Proposals to involve the Judiciary in the impeachment process were rejected. *The Federalist* No. 65, at 398-400 (Hamilton); 2 Farrand 39, 46, 159, 172, 186-551. The circumstances of

In sum, the standing decision of the court of appeals in this case violates the doctrine of separation of powers in two related and mutually reinforcing respects. First, it fails to adhere to "the proper—and properly limited—role of the courts in a democratic society" (*Warth* v. *Seldin*, 422 U.S. 490, 498 (1975)) and the fundamental principle that whether a plaintiff has "suffered cognizable injury" (*Valley Forge*, 454 U.S. at 474) "must be answered by reference to the Art. III notion that federal courts may exercise power only 'in the last resort, and as a necessity.'" *Allen*, 468 U.S. at 752, quoting *Chicago & Grand Trunk Ry.* v. *Wellman*, 143 U.S. 339, 345 (1892). Second, it erroneously attributes to Congress a legally cognizable interest, capable of being implemented through the agency of the federal courts, in overseeing the manner in which the Executive Branch interprets and executes the law.[14]

---

the present case of course do not remotely implicate the impeachment power. But the express provision in the Constitution for this carefully circumscribed means by which Congress may initiate an adjudication regarding the legality of the conduct of Executive officials strongly reinforces the conclusion that the Constitution forecloses Congress from calling on the federal courts to adjudicate a dispute with Executive Branch officials in other, wholly different circumstances. *Chadha*, 462 U.S. at 955-956; *Kilbourn*, 103 U.S. at 191.

[14] Respondents' reliance (J. Br. in Opp. 8) on *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803), is misplaced. That was an action by an individual to receive the governmental commission that he claimed he was owed, the denial of which was indisputably an injury-in-fact to him in his private capacity. We do not dispute that a person claiming to have been elected to Congress would have standing to sue to vindicate his entitlement to office (although the suit might be nonjusticiable for other reasons). Cf. *Powell* v. *McCormack*, 395 U.S. 486 (1969). This case, however, concerns not a private entitlement to office, but the boundaries of the powers of such an office, presented wholly apart from any private injury. See *Moore*, 733 F.2d at 959 (Scalia, J., concurring) (distinguishing the "private right to the office itself" from "the powers of the office," which "belong to the people and not to [the officers themselves]").

B. Members Of Congress Do Not Have Standing To Challenge Executive Action Or Inaction On The Ground That It Has "Nullified" Their Votes

As shown above, the court of appeals erred in recognizing a general right of Congress (or its Members) to bring suit to vindicate an asserted interest in obtaining a particular interpretation of the Constitution. But even if congressional standing might properly be recognized under some circumstances, respondents in this case lack standing for yet another, albeit related, reason: respondents alleged injury is no more than a generalized grievance arising from the President's failure to follow the certification requirements that would have been imposed if H.R. 4042 became a law. Especially when asserted by Congress or its Members, such a generalized grievance is not one "'traditionally thought to be capable of resolution through the judicial process'" (*Allen*, 468 U.S. at 752, quoting *Flast*, 392 U.S. at 97). See Pet. App. 81a-89a (Bork, J., dissenting).

The individual Members of Congress argued below that the President's position that H.R. 4042 was not a validly enacted law, and the resulting failure to publish the bill as a law, had "nullified" their votes in favor of the bill. See Pet. App. 8a-9a; J.A. 27. At bottom, however, this argument is nothing more than a claim that the President has failed to execute the law. The individual respondents do not and could not claim that they were denied an opportunity to vote in Congress. Their votes were fully counted and, indeed, were fully effective in securing the passage of H.R. 4042 and its presentment to the President. Thus, respondents' argument can only be that their votes have been "nullified" because the President did not adhere to the requirements of H.R. 4042 after it passed both Houses.

Once this is understood, the court of appeals' error becomes manifest. If the President had admitted that H.R. 4042 had become a law but refused to enforce it, individual Members of Congress plainly would lack standing to sue. Members of Congress are not injured in a manner distinct from citizens generally as a result of the Presi-

dent's alleged failure to enforce a law. See Pet. App. 68a (Bork, J., dissenting) ("[T]he Framers * * * did not conceive of the powers of elected representatives as apart from the powers of the electorate."). Nor is there anything in the role established for Congress by the Constitution that confers on either House or the Members of which they are composed a special right to ensure, outside of the political process, that laws passed by Congress are enforced. See *Ameron, Inc.* v. *United States Army Corps of Engineers*, 787 F.2d 875, 888 (3d Cir. 1986) (congressional intervenors "lack their own standing to obtain an injunction forcing compliance with the law," because "Congress's interest in its enforcement is no more than that of the average citizen"); *AFGE* v. *Pierce*, 697 F.2d 303, 305 (D.C. Cir. 1982) ("Any interest that a congressman has in the execution of laws would seem to be shared by all citizens equally."). And, of course, a citizen who asserts merely an "abstract injury in nonobservance of the Constitution" or federal statutes lacks standing to sue. *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 223 n.13 (1974). *Diamond* v. *Charles*, No. 84-1379 (Apr. 30, 1986), slip op. 9; *Valley Forge*, 454 U.S. at 482-483; *Allen*, 468 U.S. at 754; *Reservists*, 418 U.S. at 217; *Ex parte Levitt*, 302 U.S. 633 (1938).[15]

In other words, Members of Congress do not have any continuing, quasi-proprietary stake in a bill after it has passed out of the domain of the Legislative Branch. At that point, any official relation of the Federal Government to the measure devolves upon the other two Branches. *La Abra Silver Mining Co.* v. *United States*, 175 U.S. 423, 454 (1899). If the bill becomes a law,

[15] This limitation on standing is especially salient in the context of an attack on the spending practices of the Executive Branch. The Court emphasized in *Valley Forge* that "the expenditure of public funds in an allegedly unconstitutional manner is not an injury sufficient to confer standing" (454 U.S. at 477), and that the limited exception to this rule enunciated in *Flast* v. *Cohen* is inapplicable to challenges directed at actions of the Executive, rather than Congress (454 U.S. at 479).

it is the President's responsibility under Article II, Section 3 to "take Care" that it is "faithfully executed" and the Judiciary's responsibility to interpret the law in a case properly brought before it. But no justiciable case or controversy is presented by the manner of the Executive's implementation unless a plaintiff alleges distinct and palpable injury flowing from the Executive's action or inaction. *Allen*, 468 U.S. at 751.[16]

The consequences of recognizing congressional standing to challenge whether the President is properly executing the laws would be especially untoward. In the absence of private injury, the Constitution has left "much of the allocation of powers * * * to political struggle and compromise." Pet. App. 79a (Bork, J., dissenting). Recognition of congressional standing to assert the type of injury

[16] Respondents' extensive reliance (J. Br. in Opp. 9; H.R. Br. in Opp. 13, 14) on *Coleman* v. *Miller*, 307 U.S. 433 (1939), is misplaced. There, the Court held that it had jurisdiction to review the decision of a *state* court that, unconstrained by Article III, had decided federal constitutional questions in an action brought by state legislators. The Court concluded that the interest of the legislators, which was "treated by the state court as a basis for entertaining and deciding the federal questions," was "sufficient to give the Court jurisdiction to review that decision" (307 U.S. at 446). *Coleman* does not stand for the broad proposition that *all* legislators have standing to bring an action in *federal* court on the basis of an asserted injury to their lawmaking functions. See Pet. App. 95a-99a (Bork, J., dissenting). Although the state senators in *Coleman* were held by the state supreme court to have a legally cognizable interest as a matter of state law in the effectiveness of their vote, the doctrine of separation of powers demonstrates that *federal* legislators have no comparable interest under the *federal* Constitution. Cf. *Baker* v. *Carr*, 369 U.S. 186, 210 (1962); *Reynolds* v. *Sims*, 377 U.S. 533, 572-575 (1964); *United States* v. *Gillock*, 445 U.S. 360, 370-372 (1980); *Bender* v. *Williamsport Area School District*, No. 84-773 (Mar. 25, 1986), slip op. 10 n.7. Moreover, the injury asserted by the legislators in *Coleman* arose out of the voting procedures followed in the state senate (see 307 U.S. at 436)—a subject that would appear to be particularly immune from judicial scrutiny as regards Congress (Art. I, § 5, Cl. 2; Art. I, § 6, Cl. 1) and that differs in kind from the challenge presented here, which is essentially a generalized challenge to an alleged failure by the Executive to enforce the law.

claimed by respondents here would allow, and indeed encourage, Members of Congress to circumvent the "intensely practical" process of "compromise and accommodation" that is essential to the day-to-day "business of government." *Id.* at 78a.[17] Instead, federal judges, who often are "not familiar with the very real and multitudinous problems of governing" (*ibid.*), would routinely be called upon to resolve disputes between the political branches. And they would be required to do so before a law's "real effects upon real persons in real circumstances" (*ibid.*) could be known.

Moreover, even if Congress or one of its Houses might have such standing, individual Members of Congress clearly could not. This follows directly from *Bender* v. *Williamsport Area School District*, No. 84-773 (Mar. 25, 1986). There, the Court held that "members of collegial bodies do not have standing to perfect an appeal the body itself has declined to take." Slip op. 9-10. Under *Bender*, if there is a judicially cognizable injury to Congress at all, only that body may assert it. See *United States* v. *Ballin*, 144 U.S. 1, 7 (1892) ("Power is not vested in any one individual, but in the aggregate of the members who compose [the House of Congress] * * *."). This clear rule best comports with the separation of powers, because it does not enmesh the judiciary in intrusive and essentially political inquiries into whether a particular Member is faithfully advancing the considered views of the Legislative Branch. Cf. *Goldwater* v. *Carter*, 444 U.S. 996, 997-998 (1979) (Powell, J., concurring). This rule also reflects the reality that, upon passage of a bill, the vote of an individual Member merges into the vote of the House as a whole, as attested by the signature of the responsible officer of that House. *Field* v. *Clark*, 143 U.S. 649, 672 (1892).

---

[17] In *Gregg* v. *Barrett*, 771 F.2d 539, 543 (D.C. Cir. 1985), the court of appeals acknowledged that its doctrine of congressional standing has spawned a "plethora of cases" in which individual Members of Congress have "challenge[d] actions or failures to act as violations of the [M]embers' interests as legislators."

C. The Senate And The Speaker And Bipartisan Leadership Group Of The House Do Not Have Standing To Challenge The Application Of The Pocket Veto Clause Based On Alleged Injury To The Lawmaking Powers Of Congress

The intervenor-respondents alleged below that the President's reliance on the Pocket Veto Clause in his decision not to give effect to H.R. 4042 deprived the Senate and House of their "constitutional role in the enactment of legislation" (J.A. 58, 90). However, it is immaterial that respondents have chosen to describe their injury in terms of the lawmaking provisions of Article I, Section 7, rather than the President's duty faithfully to execute the laws. Whatever form of words respondents might choose, this suit is in all respects equivalent to one expressly challenging the President's execution of the laws.

In any event, neither Article I, Section 7 in general nor its Pocket Veto Clause in particular creates any judicially cognizable interests on the part of Congress. Article I, Section 7, by "prescrib[ing] and defin[ing] the respective functions of the Congress and of the Executive in the legislative process" (*Chadha*, 462 U.S. at 945), merely establishes a "rule of recognition"[18] for identifying those measures that have become laws of the United States. Accordingly, the failure by either Congress or the Executive to invoke its respective prerogatives under the Constitution's "finely wrought" lawmaking procedures (*Chadha*, 462 U.S. at 951) is not a "violation" of the Constitution. It follows that such a failure by one Branch does not give rise to a constitutionally based "injury" to the other that may be redressed by the courts.[19]

---

[18] H. Hart, *The Concept of Law* 92 (1961).

[19] In *Chadha*, for example, the President did not claim that he suffered a legally cognizable injury as a result of the exercise of the legislative veto and that he was therefore entitled to a judicial declaration or injunction forbidding its use. Rather, the case arose in an adversary context between the INS and an alien facing deportation (462 U.S. at 930). Although the Senate and House were permitted to *intervene* in the regular statutory review proceedings

In the present context, for example, the only consequence of the operation of the self-executing procedures in Article I, Section 7 is that H.R. 4042 either did or did not become a law, depending upon whether its return to the originating House was prevented by Congress's adjournment. In either event, the only legal significance of the operation of Article I, Section 7 is for persons who would have rights or duties under the bill if it did become a law. By contrast, neither alternative has an impact on Congress or its Houses and Members. Their role in the legislative process as regards H.R. 4042, which extended only to the presentment of the bill to the President, remains fully effective and effectuated, because any failure of H.R. 4042 to become a law is attributable to circumstances occurring after presentment. And Congress likewise is unimpeded in the continued performance of its legislative duties as regards other bills. Congress therefore suffers no "'distinct and palpable'" injury (*Allen*, 468 U.S. at 751) as a result of the President's determination that H.R. 4042 did not become a law, and Congress does not "'stand to profit in some personal interest'" (*id.* at 766) as a result of a judicial resolution of that question. Accordingly, Congress has no standing to bring an action against Executive Branch officials to litigate that issue.

Instead, whether any particular bill became a law notwithstanding the President's withholding of his approval of it is a question properly answered by a court only in an action brought by a private person who has a direct stake in the status of the bill. See *Diamond*, slip op. 7. The mere fact that some bills, such as H.R. 4042, might not affect private rights in a manner that would give any

---

initiated by the alien under 8 U.S.C. 1105a, in order to *defend* the constitutionality of the challenged statute (462 U.S. at 930 n.5, 939), that case does nto suggest that the House and Senate would have had standing as *plaintiffs* to bring an independent action against the Attorney General challenging the statutory validity of his decision not to deport Chadha (see *id.* at 957 n.22) or seeking an abstract declaration of the constitutional validity of the legislative veto.

private person standing to obtain a judicial declaration of their validity is plainly insufficient to confer standing on Congress. "The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." *Reservists*, 418 U.S. at 227; *Valley Forge*, 454 U.S. at 489.[20]

---

[20] Even if it might in some circumstances be permissible for courts to referee a dispute solely between the Legislative and Executive Branches, the intervenors in this case—the Senate and the Speaker and Bipartisan Leadership Group of the House—lack standing to represent Congress as a whole. The Court emphasized in *Chadha* that the bicameral character of the Legislative Branch "serve[s] essential constitutional functions" by "assur[ing] that the legislative power would be exercised only after opportunity for full study and debate in separate settings" (462 U.S. at 951). For this reason, apart from certain "narrow, explicit, and separately justified" exceptions (*id.* at 956) not relevant here, Congress may act only through the express concurrence of both houses.

Such concurrence would be particularly important in the context presented here. As we have explained with respect to the standing of individual members of Congress, the separation of powers concerns raised by congressional standing are heightened where the courts cannot be assured that the parties purporting to represent the interests of Congress truly are doing so. This concern at least could be addressed by requiring that Congress as a whole express its position on participation in a particular case by means of a concurrent resolution. In this case, although the Senate authorized its Legal Counsel to intervene (S. Res. 98-313, 98th Cong., 2d Sess. (1984); 130 Cong. Rec. S237 (daily ed. Jan. 26, 1984)), there is no indication that the House conferred similar authority on the Speaker and Bipartisan Leadership Group.

Furthermore, the Senate Legal Counsel has statutory authority to intervene only in pending legal actions concerning "the powers and responsibilities of Congress." 2 U.S.C. 288e(a) and (c). This action, at bottom, does not concern the powers of Congress; it concerns whether H.R. 4042 became a law and (according to respondents' current theory) whether petitioners must bring about its publication. Moreover, the Senate Legal Counsel is not authorized to *initiate* an action on behalf of the Senate against the Executive. See S. Rep. 95-170, 95th Cong., 1st Sess. 103 (1977). Because the plaintiff Members of Congress did not have standing to sue and because the Senate could not have initiated this action, the Senate's intervention did not provide a basis for continuing this suit. See 7A C. Wright & A. Miller, *Federal Pratice and Procedure* § 1917, at 584-586 (1972).

D. Respondents Do Not Have Standing To Enforce The Bill Preservation And Publication Statutes

Respondents now argue (J. Br. in Opp. 5-7, 11-12; H.R. Br. in Opp. 17-18) that, independent of their alleged interest in the substantive validity of H.R. 4042, they have standing to enforce the statutes providing for the preservation and publication of bills that have become laws. See 1 U.S.C. (Supp. II) 106a, 112, 113. Respondents obviously make this argument in an effort to avoid mootness, now that H.R. 4042 can have no legal effect in its own right. But respondents' efforts are unavailing, because they clearly do not have standing to seek a judicial order requiring the preservation and publication of H.R. 4042 as a law. Respondents have nothing more than a "generalized interest" (*Reservists*, 418 U.S. at 217), shared by all citizens, in the availability of public notice of the laws of the United States. See *Kissinger* v. *Reporters Committee for Freedom of the Press*, 445 U.S. 136, 149 (1980). That interest is insufficient to confer standing, especially because respondents received actual notice of H.R. 4042 by virtue of their participation in the legislative process. See *Lyng* v. *Payne*, No. 84-1948 (June 17, 1986), slip op. 11 n.6.

Respondents argue (J. Br. in Opp. 5-7), however, that Members of Congress are special beneficiaries of the publication statutes and that they therefore have an interest distinct from that of the public generally that entitles them to bring an action to compel publication. Respondents rely (*id.* at 5-6) on a statute passed by the First Congress, the predecessor to the present 1 U.S.C. (Supp. II) 106a. Act of Sept. 15, 1789, ch. 14, § 2, 1 Stat. 68; see Rev. Stat. § 204 (1875 ed.) In respondents' view, the provision in this 1789 statute for the delivery of a printed copy of a law to Senators and Representatives establishes that they have a sufficient stake in the publication of a law to permit them to bring this action to have H.R.

4042 declared a law and published as one under the statutes administered by the Archivist.[21]

Respondents fail to point out that the provision of the 1789 Act and related provisions expressly directing that copies of bills be furnished to Members of Congress[22] have been repealed as "obsolete" and "archaic." Act of Dec. 28, 1874, ch. 9, § 2, 18 Stat. 294 (see Cong. Globe, 43d Cong., 2d Sess. 226 (1874) (remarks of Sen. Edmunds)); Act of July 10, 1952, ch. 632, §§ 2, 7, 66 Stat. 540, 541 (see S. Rep. 1714, 82d Cong., 2d Sess. 1, 2 (1952). Nevertheless, we may assume for present purposes that if the Archivist withheld from a Member of Congress a copy of a bill that had become a law and been received by the Archivist, the Member would have standing to bring an action to compel release of a copy to him (cf. 5 U.S.C. 552(a)(4) (FOIA))—although respondents surely could obtain a copy of H.R. 4042 if that were all they wanted. See, *e.g.*, App., *infra*, 2a. What respondents have formally requested, however, is not a copy of the bill, but its publication.

But of course, at bottom, respondents seek far more than the mere enforcement of any of the statutory duties of the Archivist under 1 U.S.C. (Supp. II) 106a, 112 and 113 to preserve, publish, and make available copies of bills that have become laws. They seek to litigate the constitutional question of whether H.R. 4042 ever became a law. The ministerial bill preservation and publication statutes administered by the Archivist were never intended to create a right of action by Congress or anyone else to litigate that question.[23] Furthermore, as we have explained

---

[21] Under respondents' theory, the Governor of a State apparently also would have standing to sue the Archivist to obtain a judicial determination that H.R. 4042 became a law, because Governors too were entitled to receive copies of laws under the 1789 Act.

[22] See Act of Apr. 20, 1818, ch. 80, § 4, 3 Stat. 439; Act of Jan. 12, 1895, ch. 23, § 73, 28 Stat. 615; 44 U.S.C. (1946 ed.) 196a.

[23] Under the 1789 statute upon which respondents rely, the publication and distribution duties of the Secretary of State were not triggered until he had "received" the bill that had become a law from the President (or from the Speaker of the House or the Secretary of the Senate if the bill was repassed over the President's ob-

above (see pages 13-20, *supra*). Congress and its Houses and Members would not have standing under Article III to bring such a suit even if Congress had purported to authorize it.

III. H.R. 4042 FAILED TO BECOME A LAW WHEN THE PRESIDENT DID NOT RETURN IT TO THE HOUSE OF REPRESENTATIVES WITHIN TEN DAYS OF PRESENTMENT, BECAUSE CONGRESS, BY ITS ADJOURNMENT SINE DIE, PREVENTED THE RETURN OF THE BILL WITHIN THE MEANING OF ARTICLE I, SECTION 7, CLAUSE 2 OF THE CONSTITUTION

For the reasons stated in Points I and II, *supra*, the judgment of the court of appeals should be vacated and

jections). The current statute that triggers the Archivist's duties is essentially identical in this respect. See 1 U.S.C. (Supp. II) 106a. This statutory scheme makes clear that whether a particular bill has become a law is a matter to be resolved by the delivering official (here the President), not by the Archivist. That question therefore cannot be resolved in a suit against the Archivist to require publication of a bill he has not "received."

This defect in the basis upon which respondents now pursue this case is not cured by their joining of petitioner Geisler, the Executive Clerk of the White House, as a defendant, in order to compel him to deliver H.R. 4042 to the Archivist. The statutes upon which respondents rely do not mention the Executive Clerk or impose a duty on him to deliver a law to the Archivist. Section 106a states that the Archivist is to receive the law from the *President*, and it therefore is the President who must make the antecedent judgment whether the bill has become a law and therefore should be delivered to the Archivist. The Executive Clerk is merely the President's agent for the delivery of the bill if the President resolves that question in the affirmative. In this case, however, the President has resolved that question in the negative. Nothing in 1 U.S.C. (Supp. II) 106a, 112 or 113 suggests that it confers a right of action on Congress or anyone else to sue the Archivist or the Executive Clerk—inferior officers who are subordinate to the President—in order to collaterally attack such a decision by the President.

By contrast, in a suit brought by a proper plaintiff claiming substantive rights under a bill that he contends became a law, there would be no occasion for the plaintiff to rely on the bill publication statute or to name the Archivist or the Executive Clerk as a defendant. The plaintiff would sue the head of the agency concerned or other proper defendant to vindicate his substantive right.

the case remanded with directions to dismiss, because the case is moot and because respondents do not in any event have standing to bring this suit. If the Court rejects these submissions, the judgment of the court of appeals should be reversed on the merits.

The court of appeals clearly erred in holding that H.R. 4042 became a law when the President did not return it with his objections to the House of Representatives within ten days (Sundays excepted) after it was presented to him. By the time that ten-day period elapsed, Congress had ended the First Session of the 98th Congress and adjourned sine die. Accordingly, by operation of the last portion of Article I, Section 7, Clause 2 of the Constitution—commonly known as the "Pocket Veto" Clause—H.R. 4042 failed to become a law because "the Congress by their Adjournment prevent[ed] its Return." This conclusion is compelled by the unanimous decision in *The Pocket Veto Case*, 279 U.S. 655 (1929), which involved the precise issue presented in this case. And despite the court of appeals' strained effort to read *Wright* v. *United States*, 302 U.S. 583 (1938), as altering the rule established in *The Pocket Veto Case*, that later opinion only affirms the reasoning of *The Pocket Veto Case*.

A. The Text, Origins And Purposes Of Article I, Section 7 Establish That H.R. 4042 Did Not Become A Law

As this Court observed in *Chadha*, "[e]xplicit and unambiguous provisions of the Constitution prescribe and define the respective functions of the Congress and of the Executive in the legislative process" (462 U.S. at 945). Those functions are principally set forth in the detailed provisions of Article I, Section 7, Clause 2, which were "finely wrought and exhaustively considered" by the Framers (462 U.S. at 951). The final portion of that Clause, at issue here, addresses the situation in which Congress has rendered itself unavailable to participate further in the legislative process when the ten-day period that the Constitution affords the President to review a

bill expires. If the President does not sign the bill, the Constitution deems Congress's inability to reconsider it to be the termination of the legislative process with respect to the bill, which then automatically fails of enactment. As we explain below, this conclusion is supported by the text, origins, and purposes of the Pocket Veto Clause, and of the lawmaking procedures in Article I, Section 7 of which that Clause is a part.

1. ***The Pocket Veto Clause***

a. A straightforward reading of the constitutional text establishes that H.R. 4042 did not become a law. The final sentence of Article I, Section 7, Clause 2 provides that "[i]f any Bill shall not be returned by the President [to the House in which it originated] within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in the same Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law." By the expiration of the ten-day period after H.R. 4042 was presented to the President, Congress had ended the First Session of the 98th Congress. That adjournment prevented the President from returning the bill to be reconsidered by the House of Representatives.

Contrary to the court of appeals' view (Pet. App. 30a-31a, 36a, 46a), nothing in the constitutional text suggests that H.R. 4042 *did* become a law, despite the President's failure to approve it and Congress's adjournment, merely because the Rules of the House authorized the Clerk to receive messages from the President when the House was not in session. The Pocket Veto Clause speaks in terms of whether Congress's "*Adjournment* prevent[ed] [the bill's] Return," thereby directly linking the status of the bill to the formal act of adjournment by Congress. The significance that the Constitution attaches to the act of adjournment at the moment of its occurrence is unaffected by whatever responsibilities an officer of one House might have *after* the adjournment.

b. The irrelevance of the Clerk's authority is confirmed by the status under the Constitution of the rules of one

House of Congress. The Constitution provides that "Each House may determine the Rules of its Proceedings" (Art. I, § 5, Cl. 2), and each House's rules properly may define the powers of its officers in connection with "internal matters" (*Chadha*, 462 U.S. at 956 n.21). But such rules cannot amend the provisions of the Constitution that govern the external relations of Congress with the President in the legislative process. Cf. *United States* v. *Ballin*, 144 U.S. 1, 5 (1892). The Legislative Branch addresses the President in that process only by concurrent action of the House and Senate. In addition, as the Court held in *Chadha*, the constitutional requirement of bicameralism affirmatively bars one House from taking action that affects the legal rights and duties of persons outside the Legislative Branch (462 U.S. at 948-951, 952). Whether the return of a bill was "prevent[ed]" within the meaning of the Constitution determines whether that bill has become a law and, in this case, the nature of the responsibilities of the President and other Executive officials. Accordingly, under *Chadha*, whether a bill has failed to become a law by operation of the Pocket Veto Clause must depend upon whether Congress withdrew from the legislative process by bicameral action of the House and Senate, as the Constitution requires for any adjournment of more than three days (Art. I, § 5, Cl. 4), not on the unicameral action of one House in authorizing an agent to receive messages following such an adjournment. This bicameralism requirement is reflected in the Pocket Veto Clause's reference to an adjournment by "the Congress," which consists of the House and the Senate. See Art. I, § 1; *Wright*, 302 U.S. at 585-587; *Chadha*, 462 U.S. at 945.

c. In addition to adhering to the rule of bicameralism, the Pocket Veto Clause also incorporates the fundamental precept that legislative action requires the interaction of Congress and the President, while maintaining the autonomy of each. The significance of these principles is made manifest by Article I, Section 7, Clause 2, which reinforces the presentment requirement that the Pocket

Veto Clause implements. Clause 3 provides that "[e]very Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (*except on a question of adjournment*) shall be presented to the President of the United States" (emphasis added). See *Chadha*, 462 U.S. at 947. The emphasized exception was intended to afford the Senate and House independence from the President (although not from each other) in transacting the business of the Legislative Branch. See 1 J. Story, *Commentaries on the Constitution of the United States* §§ 843-844, at 582-583 (3d ed. 1858).[24] But the Framers prescribed a reciprocal independence for the President by assuring, through the Pocket Veto Clause, that his status and participation in the legislative process would be respected if Congress did adjourn. Although the President cannot prevent Congress from adjourning before he has completed his review of a bill, the consequence of Congress's premature withdrawal from the legislative process is that the bill will fail if the President does not sign it.

For these reasons, as the Court recognized in *The Pocket Veto Case*, the term "pocket veto" is a misnomer, and the notion that the operation of the Pocket Veto Clause is equivalent to the exercise of an absolute veto by the President "involves a misconception of the reciprocal rights and duties of the President and of Congress and of the situation resulting from an adjournment" (279 U.S. at 676). The terminology and the concepts it embodies both rest on the erroneous premise that the failure of a bill "is necessarily due to the disapproval of the President and the intentional withholding of the bill from reconsideration" (*id.* at 676-677). In truth, "the failure of the bill to become a law cannot properly be ascribed to the disapproval of the President—who presumably would

[24] The President has a limited role in relation to adjournments by virtue of Article II, § 3, which provides that the President "may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper."

have returned it before the adjournment if there had been sufficient time in which to complete his consideration and take such action—but is attributable solely to the action of Congress in adjourning before the time allowed the President for returning the bill had expired" (*id.* at 678-679). See also H.R. Rep. 93-1021, 93d Cong., 2 Sess. 2 (1974) ("A pocket veto is something the Congress causes. It is the result that occurs when Congress waives its right to reconsider legislation when its adjournment prevents the return of a bill.").[25]

The interpretation of the Pocket Veto Clause required by its plain language thus implements the principles of bicameralism and autonomy immanent in the congressional prerogative of "adjournment" and the shared responsibilities of the political Branches in the legislative process. The Constitution simply deems an adjournment by Congress to be an event that breaks the formal relationship between the Legislative and Executive Branches in the lawmaking process. Just as an adjournment prevents the President from dealing directly with Congress on any other matter until it reconvenes, an adjournment prevents him from returning a bill to Congress for reconsideration. In this case, even if H.R. 4042 and the President's objections thereto had been delivered to the Clerk of the House after Congress adjourned sine die, the President's formal communication to the House itself could not have been accomplished until the Clerk delivered the bill and the President's objections to the House when Congress commenced the Second Session of the 98th Congress some nine weeks later. The inability of the President to exercise his prerogative of communicating his objections directly to the House, sitting as one component of a co-equal Branch, was by no means cured by the fact that the House

[25] Congress can avoid the failure of a bill to become a law simply by delaying its adjournment and remaining in session until the President's time to consider the bill has expired. Alternatively, if a bill fails of enactment by operation of the Pocket Veto Clause, Congress can promptly pass an identical bill when it reconvenes. *The Pocket Veto Case*, 279 U.S. at 679 n.6.

authorized its Clerk to receive messages while the House was not in session.

d. In practical terms, the effect of the President's delivery of a bill to the Clerk for subsequent delivery to the House would be the same as if the President simply retained the bill and returned it directly to the House when Congress reconvened. It is significant, however, that the Constitutional Convention specifically rejected a proposal to require the President to follow the latter course. An initial draft of the Clause considered by the Committee of Detail provided that a bill that was not returned by the Executive within the prescribed period after presentment would become a law "unless the Legislature, by their Adjournment, prevent its Return; *in which Case it Shall be returned on the first Day of the next Meeting of the Legislature.*" 2 Farrand 162 (emphasis added).[26] But the Committee revised the Clause to provide that the bill "shall not be a law" if Congress by its adjournment prevented the return (*id.* at 181), and the Convention adopted the Clause in that form (*id.* at 296, 302). The records of the Convention do not disclose the reasons for this change. However, the most plausible explanation clearly is that the Drafters were unwilling to permit the status of an unsigned bill to remain uncertain until such time as Congress might reconvene, and that they chose instead to provide for that status to be resolved definitively when Congress has adjourned. The decision of the court of appeals fails to respect this deliberate choice by the Framers.

---

[26] This proposal apparently was patterned after the New York Constitution of 1777, which provided that an unapproved bill would become a law "unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days." 7 W. Swindler, *Sources and Documents of United States Constitution* 172-173 (1975). See *The Federalist* No. 69, at 417 (Hamilton); *United States* v. *Weil*, 29 Ct. Cl. 523, 545 (1894); cf. *Missouri Pac. Ry.* v. *Kansas*, 248 U.S. 276, 281 (1919).

2. *Article I, Section 7, Clause 2 As A Whole*

The Pocket Veto Clause of course is not an isolated provision of the Constitution; it is an integral element of the "step-by-step, deliberate and deliberative process" prescribed in Article I, Section 7 for the enactment of legislation (*Chadha*, 462 U.S. at 959). The text and purposes of Article I, Section 7 unambiguously establish that the Framers regarded the President's review of bills as a "momentous duty" (*The Pocket Veto Case*, 279 U.S. at 677) and that the disapproval of a bill by the President therefore was to be regarded as a momentous occasion of disagreement between the political Branches. See *Chadha*, 462 U.S. at 946-948; *The Federalist* No. 73, at 442-446 (Hamilton). The formal return of a bill by the President is the mechanism adopted in the Constitution for bringing about a resolution of that disagreement. An adjournment by Congress "prevent[s]" the return of a bill to Congress within the meaning of the Constitution because it prevents Congress from resolving the disagreement by either sustaining the President's disapproval or repassing the bill over his objections. The Pocket Veto Clause therefore specifies an alternative resolution in such circumstances, by declaring that the bill "shall not be a Law." The court of appeals' holding that the return of a bill may be accomplished by delivery to an agent of the House, where it may languish for weeks or months, completely ignores these fundamental principles.

The special procedures that the Framers prescribed in the event of the President's disapproval of a bill attest to the significance of the occasion. Article I, Section 7, Clause 2 provides that if the President does not approve a bill, "he shall return it, with his Objections, to that House in which it shall have originated, who *shall* enter the Objections at large on their Journal, and proceed to reconsider it"; if two-thirds of that House then agree to pass the bill, it "*shall* be sent" to the other House, by which "it *shall* likewise be reconsidered"; and if the bill also is approved by two-thirds of the second House, "it shall become a Law" (emphasis added). Moreover, "in

all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively." As this Court has observed, "it was plainly the object of [these] provision[s] that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its consideration" (*The Pocket Veto Case*, 279 U.S. at 684-685; see also *Wright*, 302 U.S. at 590, 595).[27] The effect, then, is to require that the disagreement between the President and Congress be noted in the official record of legislative proceedings, that the respective positions of the President and each Senator and Representative also be made a part of that record, and that there be an opportunity for immediate resolution of the confrontation between the political Branches.

It necessarily follows that "under the constitutional mandate [a bill] is to be returned to the 'House' when sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill" (279 U.S. at 683); see also *Missouri Pac. Ry.* v. *Kansas*, 248 U.S. 276, 280-283 (1919); cf. *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204, 231 (1821). The court of appeals' holding that the return of a bill is not "prevent[ed]" within the meaning of the Pocket Veto Clause whenever an agent of the originating House is

[27] In conformity with this mandate, "[i]t is the usual but not invariable rule that a bill returned with the objections of the President shall be voted on at once * * *, but it has been held that the constitutional mandate that 'the House shall proceed to consider' means that the House shall immediately proceed to consider it under the rules of the House, and that the ordinary motions under the rules of the House—to refer, to commit, or to postpone to a day certain—are in order * * *." W. Brown, *Constitution, Jefferson's Manual and Rules of the House of Representatives*, H.R. Doc. 97-271, 97th Cong., 2d Sess. § 108, at 46 (1983).

authorized to accept physical delivery of a message from the President cannot be reconciled with the procedures designed to bring about prompt public notice and an immediate resolution of the disagreement between the political Branches. The agent of an adjourned House has no authority to spread the President's objections at large on the journal of the House, and a bill that is delivered to him would be kept in "suspended animation" until Congress reconvened (*The Pocket Veto Case*, 279 U.S. at 684)—which in this case did not occur for nine weeks. To accord significance to the presence of an agent would trivialize the formal return of a bill by the President—which the Constitution deems to be a matter of profound urgency and public importance requiring the immediate attention of Congress itself, just as presentment requires the President to give his immediate attention to the bill and return it with his objections within ten days.

B. This Court's Decisions In *The Pocket Veto Case* And *Wright* v. *United States* Foreclose The Argument That H.R. 4042 Became A Law

As we have shown in Point A, *supra*, the text, origins, and purposes of the Pocket Veto Clause establish that Congress's adjournment sine die in this case "prevent[ed]" the President from returning H.R. 4042 to the House of Representatives for reconsideration. That question is not, however, one of first impression for the Court. The Court considered this precise question in *The Pocket Veto Case*, unanimously holding that a bill does *not* become a law in such circumstances, and the Court unanimously adhered to that view in *Wright* v. *United States*. Those decisions are controlling here and require reversal of the judgment below.

1. The Court in *The Pocket Veto Case* stated the question presented in terms that apply here as well (279 U.S. at 672):

> This case presents the question whether, under the second clause in Section 7 of Article I of the Constitution of the United States, a bill which is passed by both Houses of Congress during the first regular ses-

> sion of a particular Congress and presented to the President less than ten days (Sundays excepted) before the adjournment of that session, but is neither signed by the President nor returned by him to the House in which it originated, becomes a law in like manner as if he had signed it.

The Court held that such a bill does not become a law.[28]

Moreover, the Court in *The Pocket Veto Case* specifically rejected the very arguments upon which the court of appeals relied in this case. First, the Court dismissed the "argument that the word 'adjournment' as used in the constitutional provision refers only to the final adjournment of the Congress" at the end of its biennial term; it found "nothing in the context which warrants the insertion of such a limitation" (279 U.S. at 680). Second, although the Court acknowledged that under modern practice unfinished legislative business before either House is carried over from one session to the next (*id.* at 675), it found "no substantial basis for the suggestion that although the House in which the bill originated is not in session the bill may nevertheless be returned * * * by delivering it, with the President's objections, to an officer or agent of the House," who might then submit the bill to the House at its next session (*id.* at 683-684). The Court concluded that "delivery of the bill to such officer or agent, even if authorized by Congress itself, would not comply with the constitutional mandate," because "[t]he House, not having been in session when the bill was delivered to the officer or agent, could neither have received the bill and objections at that time, nor have entered the objections upon its journal, nor have proceeded to reconsider the bill, as the Constitution requires" (*id.* at 684).

The court of appeals in this case nevertheless has effectively confined the application of the Pocket Veto Clause

---

[28] The Court stated its holding as follows: "[W]e conclude that the adjournment of the first session of the 69th Congress on July 3, 1926, prevented the President, within the meaning of the constitutional provision, from returning Senate Bill No. 3185 within ten days, Sundays excepted, after it had been presented to him, and that it did not become a law" (279 U.S. at 691-692).

to "final" adjournments,[29] attaching dispositive significance to the authority of the Clerk to receive messages from the President following an adjournment and to rules of the House and Senate permitting the carryover of business from one session to the next (Pet. App. 31a, 33a-36a & n.27, 40a-41a, 45a-46a). That holding is flatly inconsistent with *The Pocket Veto Case*.

2. In declining to follow *The Pocket Veto Case*, the court of appeals relied on this Court's decision nine years later in *Wright* v. *United States* (Pet. App. 27a-30a, 32a-33a, 37a-39a). However, *Wright* in fact reaffirmed the holding in *The Pocket Veto Case*, and the court of appeals' reasoning in this case (and in *Kennedy* v. *Sampson*) in fact is inconsistent with the reasoning in *Wright*.

In *Wright*, the Senate, in which the bill in question had originated, was in a three-day intrasession recess when the ten-day period for the President to return the bill expired; the House of Representatives, however, remained in session. The President disapproved the bill, and he returned it to the Senate by delivering it to the Secretary of the Senate, who in turn delivered the bill to the President of the Senate when it reconvened two days later. 302 U.S. at 585. Despite the President's express disapproval of the bill, the petitioner in *Wright* contended that it became a law through an anomaly in the Constitution:

---

[29] There is no textual support for the notion that the adjournment of the last session in each two-year period that is designated as a sequentially enumerated "Congress" is unique in any respect that bears on the application of the Pocket Veto Clause. The two-year period is constitutionally significant only in defining the term during which Members of Congress hold office. Art. I, § 2, Cl. 1; Art. I, § 3, Cl. 1; Art. I, § 3, Cl. 2; Amend. XX. The Constitution itself does not speak of "terms" of Congress; it speaks of "Sessions." See, *e.g.*, Art. I, § 5, Cl. 4; Art. II, § 2, Cl. 3. See also Art. I, § 4, Cl. 2 (Congress "shall assemble at least once in every Year"); Amend. XX, § 2 (same). For this reason, even if the Framers had intended to limit the application of the Pocket Veto Clause to "final" adjournments by Congress (but see pages 43-44, *infra*), they would have had in mind the adjournment at the conclusion of a session, as in this case. See, *e.g.*, *La Abra Silver Mining Co.*, 175 U.S. at 454; J. Story, *supra*, § 891, at 652.

He argued that the Pocket Veto Clause was inapplicable, and that the President's attempted return of the bill to the Senate was ineffective because that return could not be accomplished by delivery to the Secretary of the Senate. See 302 U.S. at 596-597. Not surprisingly, the Court declined to interpret the Constitution to require that result.

The Court first concluded that the Senate's three-day recess was not an adjournment by "the Congress" that prevented the return of the bill within the meaning of the Pocket Veto Clause (302 U.S. at 587-589). Citing the "precise use of terms and careful differentiation" between Congress and its individual Houses found in Article I, Section 7, Clause 2, the Court held that "the [Pocket Veto] clause describes not an adjournment of either House as a separate body, or an adjournment of the House in which the bill shall have originated, but the adjournment of 'the Congress'" (302 U.S. at 587). Accordingly, because "'[t]he Congress' did not adjourn" and "[t]he Senate alone was in recess," the Court held that the Pocket Veto Clause was inapplicable (*ibid.*). See also *id.* at 589, 592, 597.[30]

Having decided that the Pocket Veto Clause was inapplicable, the Court turned to and rejected the argument that the President's return of the bill nevertheless was ineffective because it was accomplished by means of delivery to the Secretary of the Senate, rather than to the Senate in session (302 U.S. at 589-593). The Court repeatedly stressed that the Senate was in a unicameral recess taken under the "constitutional permission" (*id.* at 593) of Article I, Section 5, Clause 4, which provides: "Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days." See 302 U.S. at 589, 590, 591, 592, 595, 596, 598. Because the Pocket Veto Clause was inapplicable, the Court found "no violation of any express requirement of the Constitution" in the return of the bill by means of delivery to an agent of the originating House.[31] The Court explained that "[u]nder the constitutional provision the Senate was required to reconvene in not more than three days and thus would be able to act with reasonable promptitude" (*id.* at 589-590).

The Court was careful, however, not to disturb the rule of *The Pocket Veto Case*. It first observed that in *The Pocket Veto Case*, unlike in *Wright*, "the Congress had adjourned," and the Court accordingly had no occasion in the former case to decide whether the Pocket Veto Clause "applies where the Congress has not adjourned and a temporary recess has been taken by one House during the session of Congress" (302 U.S. at 593). Moreover, the Court noted that the purposes of the Clause that were discussed in *The Pocket Veto Case* would not be undermined by an arrangement permitting the return of a bill through an officer of the originating House while it is in a recess of three days or less (302 U.S. at 595):

> In such case there is no withholding of the bill from appropriate legislative record for weeks or perhaps months, no keeping of the bill in a state of suspended animation with no certain knowledge on the part of the public whether it was seasonably delivered, no causing of any undue delay in its reconsideration.

Finally, the Court stressed the narrowness of its holding and expressly refrained from addressing the situation in which even one House, with the consent of the other, might take a longer adjournment during a session of Congress (*id.* at 598).[32]

---

[30] Justice Stone joined by Justice Brandeis, would have held that the Pocket Veto Clause is applicable whenever the House in which a bill originated is not in session on the day that the President's time to consider the bill expires. See 302 U.S. at 605-609.

[31] With regard to the conclusion in *The Pocket Veto Case* that a bill must be returned to "the House in session" (279 U.S. at 682), the Court stated in *Wright* (302 U.S. at 594): "[T]hat expression should not be construed so narrowly as to demand that the President must select a precise moment when the House is within the walls of its chambers and that a return is absolutely impossible during a recess however temporary."

[32] In *La Abra Silver Mining Co.* v. *United States*, 175 U.S. 423 (1899), the Court held that a bill became a law when the President

It thus is clear on the face of the opinion that *Wright* furnished the court of appeals no support whatever for refusing to follow *The Pocket Veto Case* and for holding that the Pocket Veto Clause is inapplicable to an adjournment sine die that concludes the first session of a Congress. Moreover, although the court of appeals also relied on *Wright* for its holding in *Kennedy* v. *Sampson* that the Pocket Veto Clause has no application to *any* intrasession adjournment by Congress, *Wright* likewise fails to support that holding. *Wright* relied extensively on the three-day limit imposed by Article I, Section 5, Clause 4 on the length of an adjournment that can be taken without the concurrence of both Houses. That Clause specifies the dividing line between those adjournments that are deemed to be substantially disruptive of the legislative process and therefore to require bicameral action, and those "brief recess[es]" (*Wright*, 302 U.S. at 595) that the Framers concluded were not sufficiently likely to interfere with the business of Congress to require bicameral action.[33] In light of this function, the Clause should also be regarded as the constitutionally specified dividing line between those adjournments that "prevent" the President from returning a bill for immediate reconsideration by Congress and those brief recesses that do not unacceptably postpone such reconsideration.

---

signed it within ten days of presentment, even though Congress in the meantime had adjourned for 13 days during the session. See *id.* at 451. The decision in *La Abra* necessarily assumed that, but for the President's approval, the bill, by operation of the Pocket Veto Clause, would *not* have become a law. In fact, during the intrasession adjournment that was at issue in *La Abra*, an unsigned bill failed of enactment under that Clause. See *Presidential Vetoes, 1789-1976*, at 141 (U.S. Senate Library comp. 1978) [hereinafter cited as *Presidential Vetoes*].

[33] In the Virginia ratifying convention, James Madison explained the Clause by stating that "it would be very exceptionable to allow the senators, or even the representatives, to adjourn without the consent of the other house, at *any* season whatsoever, without any regard to the situation of public exigencies" (3 Farrand 312).

Indeed, the Court in *Wright* expressly recognized the significance of the Three-Day Adjournment Clause in this setting, observing that a three-day recess by one House in conformity with that Clause "does not constitute such an interruption of the session of the House" as to give rise to the dangers identified in *The Pocket Veto Case* (302 U.S.C. at 596). Contrary to the court of appeals' conclusion in *Kennedy* v. *Sampson*, *Wright* did *not* suggest that the Pocket Veto Clause is wholly inapplicable to intrasession adjournments by both Houses of Congress, irrespective of the resulting delay in reconsideration. *A fortiori*, *Wright* furnishes no support for the court of appeals' holding that the adjournment sine die in this case, which terminated the First Session of the 98th Congress and resulted in the absence of Congress for a period of nine weeks, did not "prevent" the return of a H.R. 4042 within the meaning of the Pocket Veto Clause.

C. Practical Construction Of The Constitution Strongly Supports The Conclusion That The Return Of H.R. 4042 Was "Prevent[ed]" By Congress's Adjournment

1. In *The Pocket Veto Case*, the Court found that "the practical construction that has been given to [the Pocket Veto Clause] * * * through a long course of years" "confirmed" its conclusion that the Clause is applicable following an adjournment sine die (279 U.S. at 688-689). The first occasion on which a bill failed to become a law by operation of the Clause followed the adjournment of the First Session of the Twelfth Congress. See *Presidential Vetoes* 5. When the Second Session of the Twelfth Congress convened, President Madison transmitted a message to Congress stating: "[H]aving been presented at an hour too near the close of the session to be returned with objections for reconsideration, the bill failed to become a law." 25 Annals of Cong. 18 (1853). This early and authoritative interpretation of the Clause by one of the principal architects of the Constitution and its presentment requirement (see *Chadha*, 462 U.S. at 947) is en-

titled to great weight. See *Marsh* v. *Chambers*, 463 U.S. 783, 790 (1983).

Moreover, prior to *The Pocket Veto Case*, "all the Presidents who * * * had occasion to deal with this question * * * adopted and carried into effect the construction * * * that they were prevented from returning the bill to the House in which it originated by the adjournment of the session of Congress; and * * * this construction ha[d] been acquiesced in by both Houses of Congress" (279 U.S. at 691). As of that time, 119 bills had been neither signed nor returned with the President's objections following such an adjournment, and "[n]one of these bills or resolutions was placed upon the statute books or treated as having become a law" (*id.* at 690). This "[l]ong settled and established practice," stated the Court, "is a consideration of great weight in a proper interpretation of constitutional provisions of this character" (*id.* at 689). See *Dames & Moore* v. *Regan*, 453 U.S. 654, 686 (1981); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 322 (1936); *J.W. Hampton, Jr. & Co.* v. *United States*, 276 U.S. 394, 412 (1928); *Stuart* v. *Laird*, 5 U.S. (1 Cranch) 299, 309 (1803).

The historical understanding as regards an adjournment sine die, which is the type of adjournment involved in this case, continued after *The Pocket Veto Case*. The court of appeals recognized "that the view that intersession adjournments do create an opportunity for a pocket veto has been accepted through most of the history of the Republic by both the President and Congress" (Pet. App. 41a), and it acknowledged that, "through President Nixon, twenty-five of the thirty Presidents who have exercised the pocket veto power at all have done so during intersession adjournments" (*id.* at 41a-42a). Furthermore, "[i]n each of these pocket vetoes—272 in all—Congress has acquiesced" (*id.* at 42a). See also H.R. Rep. 93-1021, *supra*, at 1-2. In fact, in almost 200 years, there are only three instances—all occurring since *Kennedy* v. *Sampson*—in which a President purported to return a bill with his objections following the adjournment of a session sine

die.[34] These recent incidents simply underscore the degree to which the court of appeals' unprecedented approach to the Pocket Veto Clause, adopted first in *Kennedy* v. *Sampson* and applied here in complete derogation of *The Pocket Veto Case*, has overturned a long-settled construction of the Clause.[35]

---

[34] See *Presidential Vetoes* 460 (S. 2350), 461 (H.R. 5900); *id.* at 5 (Supp. 1977-1984) (S. 2096). In *Kennedy* v. *Jones*, 412 F. Supp. 353 (D.D.C. 1976), a companion case to *Kennedy* v. *Sampson*, both an intersession pocket veto and an intrasession pocket veto were challenged. The litigation in *Kennedy* v. *Jones* was terminated by a consent judgment providing for publication of the bills at issue as laws. *Id.* at 356. At about the same time, President Ford announced that if he disapproved a bill that was before him during either an intrasession or an intersession adjournment, he would return the bill with his objections to the originating House if it had specifically authorized an officer or agent to receive such messages. See 122 Cong. Rec. 11202 (1976) (statement of Attorney General Levi). Two bills were delivered to agents of the originating House during intersession adjournments during the administration of President Ford and one was delivered in this manner during the administration of President Carter, but none was repassed over the President's objections.

[35] Prior to *Kennedy* v. *Sampson*, the practice also was consistent with respect to bills from which the President withheld his approval during *intrasession* adjournments by Congress of more than three days. See 511 F.2d at 442-445 (appendix listing 38 "pocket vetoes" during such adjournments) (the actual total may be much higher, depending upon whether certain adjournments were correctly characterized as intersession in nature; *id.* at 444 nn.4-6).

Until the 1860s, Congress rarely adjourned for more than three days during a session. *Kennedy* v. *Sampson*, 511 F.2d at 442-445. As a result, there apparently was no occasion to decide whether the Pocket Veto Clause applied in such circumstances until 1867, when two bills failed to become laws during a 16-day adjournment. See *Presidential Vetoes* 35. In a message to Congress, President Johnson stated that an adjournment "in accordance with a concurrent resolution" is the "precise condition in which [the Constitution] positively declares that a bill 'shall not be a law.'" Cong. Globe, 40th Cong., 2d Sess. 720 (1868). The Senate then debated whether the Clause is applicable during any adjournment that involves "the joint action of both Houses" (*ibid.* (remarks of Sen. Buckalew)) or whether it instead is limited to "an adjournment *sine die*" (*id.* at 721 (remarks of Sen. Sumner)). Shortly after

2. The court of appeals seemed to believe, however, that despite this practice and the Court's decisions in *The Pocket Veto Case* and *Wright*, the question whether the return of a bill is "prevent[ed]" following an adjournment sine die remained open for it to decide, essentially as a matter of fact, taking into account whether delivery of the bill was physically possible through an agent of the originating House and whether the delay and uncertainty occasioned by the particular adjournment were sufficient, in the *court's* view, to give rise to the concerns against which the Pocket Veto Clause was designed to protect. See Pet. App. 30a-37a; *Kennedy* v. *Sampson*, 511 F.2d at 439-442. Such an ad hoc approach would be unworkable. A "definite and formal" rule (*United States* v. *Smith*, 286 U.S. 6, 35 (1932)) is required to ascertain whether a bill has become a law by operation of the Pocket Veto Clause, just as such a rule is supplied at other steps of the specific procedures prescribed by Article I, Section 7 for the enactment of legislation.

---

this debate, a bill, S. 366, 40th Cong., 2d Sess. (1868), was introduced that would have declared that the Clause is applicable only when a session of the Congress has adjourned. This proposal drew strong opposition on constitutional grounds. See *The Pocket Veto Case*, 279 U.S. at 686-690 n.11; Cong. Globe, 40th Cong., 2d Sess. 1371-1373, 1404-1405, 1406, 1940-1943, 2076-2078 (1868). Although the bill was passed by the Senate, it was never reported out of committee in the House. 279 U.S. at 687.

In the ensuing 70 years, bills that were not signed during intrasession adjournments of more than three days continued to be regarded as not having become laws. *Presidential Vetoes* 141, 165, 167, 231; see also 20 Op. Att'y Gen. 503 (1892). This pattern was briefly interrupted in 1940 when, during a 10-day adjournment, President Roosevelt delivered eight disapproval messages to the Secretary of the Senate. *Presidential Vetoes* 310-313. The messages were laid before the Senate when it reconvened (86 Cong. Rec. 9566-9568 (1940)), but no steps were taken to repass the bills over the President's objections. After this incident, bills left unsigned during intrasession adjournments of more than three days again were regarded as having failed of enactment (see 40 Op. Att'y Gen. 274 (1943)), and that pattern continued until *Kennedy* v. *Sampson* was decided in 1974. 511 F.2d at 443-445.

Even the court of appeals conceded, however, that "clear rules respecting the pocket veto are vitally necessary in order that the status of bills in presidential disfavor be promptly resolved" (Pet. App. 38a). But rather than adhering to the "clear rules" specified in the Constitution and *The Pocket Veto Case*, the court held, on the basis of its own factual perceptions of modern circumstances, that the return of a bill is not actually prevented, and that the Pocket Veto Clause therefore is inapplicable, in entire categories of cases: all "intrasession" adjournments (in *Kennedy* v. *Sampson*) and all "intersession" adjournments (in this case). In the court's view, this result was justified because adjournments now typically are shorter than those the Framers might have foreseen when they drafted the Clause. See 511 F.2d at 411; Pet. App. 32a-33a, 40a-41a.

The court's factual premise is erroneous, because there is no reason to believe that the Farmers had any fixed preconceptions about how often and how long Congress would sit or how frequent and protracted its adjournments would be.[36] But however that may be, the court of appeals had no authority to disregard the explicit constitutional text, consistent historical practice, and this

---

[36] See 2 Farrand 197-200 (debates on the Annual Assembly Clause, Art. I, § 4, Cl. 2). Immediately prior to the Constitutional Convention, the Continental Congress had been in session for over ten months, from January 2, 1786, to November 13, 1786. During that time it had taken 39 recesses for one day, six for two days, and one for four days. Previously, the Continental Congress had been in almost continuous session from September 13, 1775, until June 3, 1784. Its longest adjournment in the decade that preceded the Constitutional Convention lasted five months, from June 3, 1784, to November 1, 1784. See 27 J. Continental Cong. 490, 641 (G. Hunt ed. 1928). The First and Fifth Congresses under the Constitution sat in three sessions, and in the first ten years, the annual date of assembly was repeatedly altered by Congress. See *1983-1984 Congressional Directory* 418 (Joint Comm. on Printing, 98th Cong., comp. 1983); see also 1 A. Hinds, *Hinds' Precedents of the House of Representatives* §§ 5-12, at 3-7 (1907). Moreover, the sessions of the first five Congresses ranged in length from 57 to 246 days, and adjournments ranged from two to nine months. *1983-1984 Congressional Directory, supra*, at 418.

Court's unanimous decision in *The Pocket Veto Case*, based on its own view that changed circumstances have rendered the Pocket Veto Clause anachronistic. Compare *Chadha*, 462 U.S. at 958-959. The Constitution itself stipulates that an adjournment "prevent[s]" the return of a bill, because it renders Congress unavailable for immediate receipt and reconsideration of the bill. Whether the return of a bill is prevented was not a factual question to be resolved by the court of appeals.

Moreover, the court of appeals seriously erred in believing that in modern circumstances, neither "intrasession" nor "intersession" adjournments give rise to the concerns underlying the Pocket Veto Clause. The fundamental purposes of Article I, Section 7 in this context—to assure prompt and public notation of the objections of the President on the formal record of legislative proceedings, and an opportunity for immediate resolution of what the Constitution regards as an important disagreement between the political Branches—are as important today as they were in 1787, when the Framers rejected a proposal to postpone Congress's consideration of the President's objections to the next meeting of Congress. Those purposes are seriously undermined by the court of appeals' holding, which effectively reads the Pocket Veto Clause out of the Constitution, except with respect to what the court characterized as a "final" adjournment at the conclusion of a Congress.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded with directions to dismiss on the ground that the case is moot or that respondents do not have standing to sue. If the court reaches the merits, the judgment of the court of appeals should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General
RICHARD K. WILLARD
Assistant Attorney General
CAROLYN B. KUHL
Deputy Solicitor General
EDWIN S. KNEEDLER
Assistant to the Solicitor General
WILLIAM KANTER
MARC JOHNSTON
Attorneys

JUNE 1986

APPENDIX

CONSTITUTIONAL PROVISIONS, STATUTORY PROVISIONS, AND BILL INVOLVED

1. a. Article I, Section 5, Clause 4 of the Constitution provides:

> Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

b. Article I, Section 7, Clauses 2 and 3 of the Constitution provide:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

> Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

c. Article III, Section 2 , Clause 1 of the Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. H.R. 4042, 98th Cong., 1st Sess. (1983), provided:

> That the requirements of section 728 of the International Security and Development Cooperation Act of 1981 (including the last sentence of subsection (e) of that section) shall continue to apply after the end of the fiscal year 1983 until such time as the Congress enacts new legislation providing conditions for United States military assistance to El Salvador or until September 30, 1984, whichever occurs first.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 20254